



**STATE OF TENNESSEE  
DEPARTMENT OF TRANSPORTATION**

**COMMISSIONER'S OFFICE**  
SUITE 700, JAMES K. POLK BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-1402  
(615) 741-2848

**JOHN C. SCHROER**  
COMMISSIONER

**BILL HASLAM**  
GOVERNOR

February 19, 2018

Fiscal Review Committee  
8th Floor, Rachel Jackson Bldg.  
320 Sixth Avenue North  
Nashville, TN 37243

RE: New Contract Request  
River Marine Services, Inc.  
Cumberland City, Stewart County, TN Ferry

Committee:

We would like to request that this proposed Contract for our Cumberland City, Stewart County ferry be placed on the calendar of the March, 2018 Fiscal Review Committee meeting. The referenced contract provides for the ferry service across the river at Cumberland City Tennessee for the Tennessee Department of Transportation commonly known as the Cumberland City, Stewart County Ferry. River Marine Services, Inc. has been the Contractor for this ferry since 1988 and has been approved via the Sole Course method as there are no other ferry services of this type in Tennessee.

This package contains the following materials as required by your office:

1. Revised Checklist for the Fiscal Review Committee
2. Supplemental Documentation Required for Fiscal Review Committee form.
3. A copy of the approved Special Contract Request.
4. A copy of the proposed Contract Summary sheet.
5. A copy of the proposed contract between River Marine Services, Inc. and the Department of Transportation.

Please advise if you have any questions or comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "John C. Schroer", with a long horizontal flourish extending to the right.

John C. Schroer  
Commissioner

## REVISED CHECKLIST EFFECTIVE APRIL 2014

Proposed non-competitive contracts with a term of more than one year or which contain a provision to allow for extension by either party that would extend the contract beyond 12 months and which have a cumulative value of not less than \$250,000, including all possible extensions; and

Any amendment to a contract (meeting the \$250,000 and over one year threshold) must be presented to the Fiscal Review Committee (FRC), *60 days prior to the proposed effective date*, if it meets any of the following conditions:

- increases or decreases the maximum liability;
- extends or shortens the original term of the contract;
- changes the entity or name of the entity with which the state is contracting; or
- otherwise changes an original contract or amended contract in a substantive manner.

*If a department or agency is unsure if a contract or amendment meets the criteria of the FRC and should be submitted for review and commit, please contact the FRC staff for a determination.*

Use the following checklist to ensure copies of the proper documentation has been submitted to the FRC staff:

- ☐ SUMMARY LETTER
  - Detailing terms of contract or amendment and detailed justification of why the goods or services should be acquired through non-competitive negotiation.
  - If request is submitted less than 60 days before effective date, a detailed explanation for why the request is late. PLEASE NOTE: LATE SUBMISSIONS WILL BE ROLLED FOR ONE COMMITTEE MEETING AND PLACED LAST ON THE AGENDA.

- ☒ SUPPLEMENTAL DOCUMENTATION FORM – Form must be completely filled out with back-up documentation from Edison of total expenditures on the date submitted. No requests will be placed on the agenda if this form is not complete.

- ☒ APPROVED RULE EXCEPTION REQUESTS (if appropriate)

**REVISED CHECKLIST  
EFFECTIVE APRIL 2014**

- ☒ **APPROVED OFFICE FOR INFORMATION RESOURCES (OIR), eHEALTH, OR HUMAN RESOURCES PRE-APPROVAL ENDORSEMENT REQUESTS (if appropriate)**
- ☒ **SPECIAL CONTRACT REQUEST**
- ☐ **SUMMARY SHEET FOR CONTRACT (original or proposed)**
- ☒ **ANY REVISED SUMMARY SHEETS**
- ☐ **ORIGINAL CONTRACT**
  - If *new* non-competitive contract, actual language of the proposed contract (can be in draft form if necessary).
- ☒ **SUMMARY SHEET FOR EACH PRIOR AMENDMENT**
- ☒ **ALL PRIOR EXECUTED AMENDMENTS**
- ☒ **REQUEST FORM and SUMMARY SHEET FOR PROPOSED AMENDMENT**
  - If *new* amendment, actual language of the proposed amendment (can be in draft form if necessary).
- ☒ **COPY OF PERFORMANCE BOND IF REQUIRED IN THE CONTRACT (if performance bond must be renewed each year, a copy of the renewal)**
- ☒ **ANY ADDITIONAL SUPPORTING DOCUMENTS**
- ☐ **FULLY EXECUTED COPY OF FINAL DOCUMENT IMMEDIATELY UPON RECEIPT BY THE DEPARTMENT**

**FRC STAFF COMMITTEE CONTACT INFORMATION:**

**Leni Chick, Contract & Audit Coordinator  
8<sup>th</sup> Floor, Rachel Jackson Building  
(615) 253-2048 (direct)  
(615) 741-2564 (main line for FRC)  
(E-mail address: leni.chick@capitol.tn.gov)**

<http://www.capitol.tn.gov/joint/committees/fiscal-review>

## Supplemental Documentation Required for Fiscal Review Committee

<b>*Contact Name:</b>	Victoria Hassinger	<b>*Contact Phone:</b>	615-532-3508
<b>*Presenter's name(s):</b>	Paul Degges, Brian Carroll and Alan Durham		
<b>Edison Contract Number: <i>(if applicable)</i></b>	N/A	<b>RFS Number: <i>(if applicable)</i></b>	N/A
<b>*Original or Proposed Contract Begin Date:</b>	July 1, 2018	<b>*Current or Proposed End Date:</b>	June 30, 2023
<b>Current Request Amendment Number: <i>(if applicable)</i></b>		N/A	
<b>Proposed Amendment Effective Date: <i>(if applicable)</i></b>		N/A	
<b>*Department Submitting:</b>		Department of Transportation	
<b>*Division:</b>		Maintenance	
<b>*Date Submitted:</b>			
<b>*Submitted Within Sixty (60) days:</b>			
<b><i>If not, explain:</i></b>		N/A	
<b>*Contract Vendor Name:</b>		River Marine Services, Inc.	
<b>*Current or Proposed Maximum Liability:</b>		\$3,700,000.00	
<b>*Estimated Total Spend for Commodities:</b>		N/A	
<b>*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i></b>			
<b>FY: 2019</b>	<b>FY:</b>	<b>FY:</b>	<b>FY:</b>
\$ 3,700,000.00	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison)</i></b>			
<b>FY:</b>	<b>FY:</b>	<b>FY:</b>	<b>FY:</b>
\$	\$	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>		N/A	
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>		N/A	
<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>		N/A	

## Supplemental Documentation Required for Fiscal Review Committee


<b>*Contract Funding Source/Amount:</b>			
<b>State:</b>	\$3,700,000.00	<b>Federal:</b>	
<b>Interdepartmental:</b>		<b>Other:</b>	
If “ <i>other</i> ” please define:		N/A	
If “ <i>interdepartmental</i> ” please define:		N/A	
<b>Dates of All Previous Amendments or Revisions: (<i>if applicable</i>)</b>		<b>Brief Description of Actions in Previous Amendments or Revisions: (<i>if applicable</i>)</b>	
N/A		N/A	
<b>Method of Original Award: (<i>if applicable</i>)</b>		N/A	
<b>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</b>		N/A	
<b>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</b>		None	

## Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.


NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

<b>APPROVED</b>  <b>Michael F. Perry-CS</b> <small>Digitally signed by Michael F. Perry-CS          DN: cn=Michael F. Perry-CS,          o=CPO, ou=32101,          email=Chris.Sallita@tn.gov, c=US          Date: 2017.11.27 16:12:16 -06'00'</small>	<b>APPROVED</b>   <b>COMPTROLLER OF THE TREASURY</b>
<b>CHIEF PROCUREMENT OFFICER</b> <b>DATE</b>	<b>COMPTROLLER OF THE TREASURY</b> <b>DATE</b>

<b>Request Tracking #</b>	<b>40100-08218</b>
<b>1. Contracting Agency</b>	<b>Department of Transportation (TDOT)</b>
<b>2. Type of Contract or Procurement Method</b>	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
<b>3. Requestor Contact Information</b>	<b>Lyn Brown ASA 2/Rest Area Coordinator</b> <b>Phone 615-532-3452</b> <b>Fax 615-532-5995</b>
<b>4. Brief Goods or Services Caption</b>	<b>Ferry across Cumberland River (Cumberland City Ferry, Stewart County SR-48)</b>
<b>5. Description of the Goods or Services to be Acquired</b>	<b>This contract will replace the current contract due to expire 06/30/18. This is the only way for anyone to get across the river at Cumberland City SR-46 as there is no bridge at this location and the cost to build a bridge would be more expensive than the ferry service.</b>
<b>6. Proposed Contractor</b>	<b>River Marine Services, Inc.</b>

<b>Request Tracking #</b>	<b>40100-08218</b>
<b>7. Name &amp; Address of the Contractor's principal owner(s)</b> – NOT required for a TN state education institution	<b>H. Paul Ritchie, President</b> <b>P O Box 3524, Clarksville TN 47043</b>
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	<b>60 months</b>
<b>9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	<b>\$ 3,700,000.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	<b>Discussion with Contractor, estimate of possible repairs and inflation</b>
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	<b>Internet search for cost of repairs and inflation</b>
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	<b>Phone calls, Internet search for cost of repairs and inflation according to US Government</b>
<b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>	<b>This is the only way for anyone to get across the river at Cumberland City SR-46 as there is no bridge at this location and the cost to build a bridge would be more expensive than the ferry service</b>
<b>19. Proposed contract Impact on current State operations</b>	<b>None</b>
<b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	<b>After a search of the Internet, TDOT has found that there are no other companies capable of operating this ferry while meeting all of the specifications and regulations required to operate this ferry nor do they have the experience that this company has in operating this ferry.</b>
<b>For No Cost and Revenue Contracts Only</b>	
<b>21. What costs will the State incur as a result of this contract? If any, please explain.</b>	
<b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>	

<b>Request Tracking #</b>	<b>40100-08218</b>
<b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>	<input type="checkbox"/> NO <input type="checkbox"/> YES
<b>24. Summary of State responsibilities under proposed contract</b>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>	We have another contract with River Marine who also operates the Benton-Houston Ferry. River Marine has operated both ferries since 1988
<b>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b>	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, <b>Method: Sole Source</b> <b>Name/Address: River Marine Services, Inc. PO Box 3524, Clarksville, TN 47043</b>
<b>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>	In an Internet search only three names were found for ferry operation in Tennessee. River Marine Services, Inc., Shelby County Port Commission and Jam Marine Enterprises. Both Shelby County Port Commission and Jam Marine Enterprises are an inland water passage transportation companies that do not operate a ferry such as operated by River Marine Services, Inc. for this location
<b>Signature Required for all Special Contract Requests</b>	
<b>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</b>	
<b>Signature:</b> 	<b>Date:</b> NOV 13 2017



**TO:** Director of Sourcing  
Staff Attorney – Sourcing

**FROM:** Jennifer Nickoloff, Sourcing Analyst

**DATE:** November 16, 2017

**SUBJECT:** Recommendation of Special Contract Sole Source Request  
Tracking #: cy17-9854

The Tennessee Department of Transportation (TDOT) is requesting special contract request approval of a Sole Source Procurement.

TDOT has researched companies that operate ferries. After a detailed search, TDOT found that there are no other capable companies in the area to operate the ferry that meets all the specifications and regulations required by law. They also have the experience that TDOT is looking for.

I, Jennifer Nickoloff, recommend the approval of this revenue request.

Chris Salita

Digitally signed by Chris Salita  
DN: cn=Chris Salita, o=CPD, ou=CPD,  
email=Chris.Salita@tn.gov, c=US  
Date: 2017.11.16 15:52:00 -0500

Director of Sourcing

Date

Kevin C. Bartels

Digitally signed by Kevin C. Bartels  
DN: cn=Kevin C. Bartels, o=CPD, ou,  
email=Kevin.C.Bartels@tn.gov, c=US  
Date: 2017.11.16 12:56:29 -0500

Staff Attorney – Sourcing

Date



## CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date 07/01/2018	End Date 06/30/2023	Agency Tracking # 40100-08218	Edison Record ID
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Contractor Legal Entity Name River Marine Service, Inc.	Edison Vendor ID 42600
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**Goods or Services Caption (one line only)**

Operation of Cumberland City Ferry across Cumberland River

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2019	740,000.00				740,000.00
2020	740,000.00				740,000.00
2021	740,000.00				740,000.00
2022	740,000.00				740,000.00
2023	740,000.00				740,000.00
<b>TOTAL:</b>	<b>3,700,000.00</b>				<b>3,700,000.00</b>

**Contractor Ownership Characteristics:**

- ☐ Minority Business Enterprise (MBE):  
☐ African American ☐ Asian American ☐ Hispanic American ☐ Native American
- ☐ Woman Business Enterprise (WBE)
- ☐ Tennessee Service Disabled Veteran Enterprise (SDVBE)
- ☐ Disabled Owned Business (DSBE)
- ☐ Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.
- ☐ Government ☒ Non-Minority/Disadvantaged ☐ Other:

**Selection Method & Process Summary (mark the correct response to confirm the associated summary)**

- ☐ Competitive Selection Describe the competitive selection process used
- ☒ Other The Special Contract Request was approved for a Sole Source Contract

**Budget Officer Confirmation:** There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

Speed Chart (optional) TX00078874	Account Code (optional) 7089900
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**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF TRANSPORTATION**  
**AND**  
**RIVER MARINE SERVICE INC.**

This Contract, by and between the State of Tennessee, Department of Transportation ("State") and River Marine Service, Inc. ("Contractor"), is for the provision of the operation of the Cumberland City Ferry across the Cumberland River in Stewart County Tennessee, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a: Corporation

Contractor Place of Incorporation or Organization: Tennessee

Contractor Edison Registration ID # 42600

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The contractor shall provide operation of the Cumberland City Ferry across the Cumberland River. The ferry (tug and barge) are owned by the State of Tennessee. It is located in Cumberland City, Stewart County, Tennessee on State Route 46.
- A.3. The Contractor shall operate the ferry as follows:  
  
Monday thru Friday – 5:30 a.m. to 6:00 p.m. local time  
Saturday and Sunday - 6:00 a.m. to 6:00 p.m. local time  
  
The Contractor shall operate the ferry 365 days per year.
- A.4. The Contractor shall operate on a daily crossing schedule that ensures that users of the ferry services are not required to wait in excess of one-half (1/2) hour for service.
- A.5. The State reserves the right to increase or decrease the hours of operations based upon the service usage pattern.
- A.6. In order to provide for continuous service, the State reserves the right to request the Contractor to furnish substitute ferry equipment (tug and barge) during the time the State's ferry is out of service for repairs or dry docked for U.S. Coast Guard (USCG) inspection and repairs. The substitute ferry equipment shall meet all necessary USCG, Federal and State requirements associated with Ferry Boat operations.
- A.7. The Contractor may repair or replace any mechanical equipment in the tug and barge, as needed, and only upon approval by the Regional Engineering Director (or his designee) by telephone at 615-350-4300. The State shall reimburse Contractor for actual cost of these repairs.
- A.8. The Contractor shall transport the State's ferry equipment (tug and barge) to the closest possible USCG certified marine repair and return to the Cumberland City ferry work location. The ferry equipment (tug and barge) requires USCG certification once every five year interval with the next scheduled certification required in 2023.
- A.9. The Contractor shall perform all preventative maintenance related to the ferry operation including, but not limited to the following:
  - a. Check fluid level

- b. Perform all required lubrication
  - c. Maintain the vessel in a clean and orderly state
  - d. Maintain record showing date and type of preventative maintenance performed
- A.10. The Contractor shall provide all lubricants and diesel fuel necessary for the operation of the tug. Notwithstanding the forgoing, the State, at its sole discretion may opt to provide diesel fuel for the operation of the ferry, provided that the State gives the Contractor thirty (30) days notice of such a determination.
- A.11. The Contractor shall maintain all safety equipment, as required by the USCG, in order to ensure operational readiness at all times of operation. In the event that such equipment requires repair or replacement, such repair or replacement shall be the responsibility of the Contractor.
- A.12. The Contractor shall furnish, install and maintain a radar unit acceptable for river navigation. The Captain on duty during hours of operation shall have proper USCG radar license and/or certification. Contractor will retain ownership of the radar unit at all times.

The contractor shall furnish, install and maintain two VHF radio units and necessary wiring acceptable for river navigation. The Captain on duty during hours of operation shall have proper USCG radio license and/or certification. The Contractor will retain ownership of the radio units at all times.
- A.13. During hours of operation, the Contractor shall furnish a minimum crew of a Captain and two (2) Deckhands, who have the required State, Federal and USCG certifications and licenses to perform their duties.
- A.14. The Contractor shall post in a conspicuous location and shall maintain all signs associated with the operation. These signs include, but are not limited to the following:
  - a. A three (3) foot by four (4) foot sign on the ferry showing the name of the operating company (the Contractor), operation on duty, address and telephone number of the operating company. This sign shall be provided by the Contractor and shall require the prior approval of the State before posting.
  - b. The Contractor shall not install or display any additional signs without the prior approval or the direction of the State.
- A.15. In the event that the contractor should cease operations or interrupt scheduled operations for any reason, the Contractor shall immediately notify the Regional Engineering Director (or his designee) of the Tennessee Department of Transportation – TDOT by telephone at 615.350.4300 that services have been halted or interrupted and give the reason services were halted and when services will resume.
- A.16. In the event of an occurrence affecting the safe operation of the vessel, an injury to the general public, a serious injury to the crew, vandalism or serious accident involving the crew and/or vessel, the Contractor shall immediately notify the Regional Engineering Director (or his designee) of the Tennessee Department of Transportation – TDOT by telephone at 615-350-4300. Incidents of a lesser nature may be reported during the next business day.
- A.17. The Contractor and his personnel shall be polite, well mannered and shall present a clean and neat appearance to the general public at all times.
- A.18. The Contractor shall ensure that the Captain, Crew and other persons associated with the operations of the Ferry Service have the necessary USCG certifications.

- A.19. In the event the Contractor elects to replace the Captain(s) of the vessel, the Contractor shall notify the State. The State reserves the right to approve such replacement.
- A.20. The Contractor shall comply with all Federal, State and Local Laws and ordinances addressing the operation, licensing and certification requirements associated with the operation and maintenance of a Ferry Boat and it's crew.
- A.21. The contract shall be responsible for collecting all fees associated with the operation of the Ferry Service. Fees collected shall be deposited to the State's account on a daily basis. The State will provide the Contractor with the account information no later than July 1, 2013.

The Contractor shall maintain a count on the basis of the fee schedule below: i.e. number of passengers, cars, trucks, cycles or trailers. The State's Finance Division shall verify the revenue collected agrees with the count.

The State shall advise the Contractor of the fee schedule and a sign will be provided for posting on the Ferry to reflect the current rates.

The maximum rate allowed to be charged is as follows per TCA 54-13-317 (a) established the rate above; TCA 54-13-317 (b) allows the Commissioner establish a higher maximum. Any such rate revision shall be effected by contract amendment.

Automobile, passengers and driver	\$ 2.00
Person, each on foot	\$ 0.50
Truck or bus (one (1) ton capacity and under) and driver	\$ 2.00
Truck or bus (one (1) ton capacity and over) and driver	\$ 4.00
Automobile trailer*	\$ 1.50
Truck trailer or bus trailer*	\$ 3.00
*Trailer fee will be in addition to the fee for the towing vehicle	
Motorcycle and driver	\$ 2.00

Residents of Houston, Montgomery and Stewart Counties \$ 0.75  
"This fee is established" per TCA 54-11-308D (1 & 2)

- A.22. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.23. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective on **Jul 1, 2018** ("Effective Date") and extend for a period of **sixty (60) months** after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Three Million Seven Hundred Dollars and no cents** (\$3,700,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.

b. The Contractor shall be compensated based upon the following payment methodology:

(1) For service performed from July 1, 2018 through June 30, 2023, the following rates shall apply.

<b>Goods or Services Description</b>	<b>Amount (per compensable increment)</b>
Ferry Boat Operation (Hourly Rate)	\$ 121.50 per hr
Substitute Ferry Tug – provided in accordance with Contract Section A.6., during the time the State's ferry tug is out of service for repairs or dry docked for emergency repairs for U.S. Coast Guard (USCG) inspection and repairs (Rate Per Day)	\$ 150.00 per day
Substitute Ferry Barge – provided in accordance with Contract Section A.6., during the time the State's ferry tug is out of service	\$ 100.00 per day



for repairs or dry docked for emergency repairs for U.S. Coast Guard (USCG) inspection and repairs (Rate Per Day)	
Transport of State Ferry Tug (including all incidental travel expense) – provided in accordance with Contract Section A.8. for repair or required certification.	The Contractor shall be paid the same rate as stated in the hourly rate above for Ferry Boat Operation
Transport of State Ferry Barge (including all incidental travel expense) – provided in accordance with Contract Section A.8. for repair or required certification.	The Contractor shall be paid the same rate as stated in the hourly rate above for Ferry Boat Operation
Repairs	Reimburse at actual cost. Documentation must be provided with invoices

(2) For service performed from July 1, 2019 through June 30, 2020, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2019 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(3) For service performed from July 1, 2020 through June 30, 2021 the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2020 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(4) For service performed from July 1, 2021 through June 30, 2022, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2021 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

(5) For service performed from July 1, 2022 through June 30, 2023, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, all items expenditure category, not seasonally adjusted, index based period: 1982-84=100 published by the United States Department of Labor, Bureau of Labor Statistics in May, 2022 and that figure published in the same month, 12 months prior, up to a maximum of three percent.

- c. The Contractor shall not be compensated for travel to the primary location of service.
- d. A "day" shall be defined as a minimum of twelve and one half (12-1/2) hours of service on Monday through Friday and shall be defined as a minimum of twelve (12) hours of Service on Saturday and Sunday. The Contractor shall bill only for portions of a day if the Contractor provided fewer than twelve hours of service in a standard twenty-four hour day. The Contractor shall not bill more than the daily rate even if the Contractor works more than twelve and one half (12-1/2) hours Monday through Friday or twelve (12) hours Saturday or Sunday.

- e. In the event that operations are halted due to equipment breakdown other than maintenance or required repairs as defined in paragraph A.6., high water, fog, or some other force or major factor, the Contractor shall be compensated at a Standard-by Unit Rate of 50% of the hourly rate for the normal hours of operations during the first forty eight (48) continuous hours subsequent to the start of the cessation of operations. After the initial forty eight (48) hour period, the Contractor shall not be due any additional compensation until operations are resumed.
- f. The State shall reimburse the Contractor for the actual cost of:
  - (1) all lubricants and diesel fuel necessary for the operation of the tug provided in accordance with Contract Section A.10.
  - (2) repairs provided in accordance in Contract Section A.8., which are necessary for the operation of the tug and barge and the maintenance of USCG Certification, provided that all such repairs are pre-approved by the State.

Provided that such purchases were competitive or otherwise made in accordance with Contract Section A.8. and A.10. and the associated costs were reasonable, necessary, and the actual. The State will employ all reasonable means and will require all such documentation that it seems necessary to audit and ensure that such purchases were competitive or otherwise made in accordance with this contract and the associated costs were reasonable necessary and actual. The Contractor shall provide reasonable assistance and access related to such interview.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Department of Transportation  
Maintenance Division  
1920 Wilma Rudolph Blvd.  
Clarksville, TN 37040

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Transportation Maintenance Division;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;



- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the

Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Alan Durham, Executive Administrative Assistant 2  
Tennessee Department of Transportation  
505 Deaderick Street, Suite 400  
James K. Polk Building  
Nashville, TN 37243  
[Alan.Durham@tn.gov](mailto:Alan.Durham@tn.gov)  
Telephone # 615-741-2027  
FAX # 615-532-5995

The Contractor:

Captain H. Paul Ritchie  
River Marine Service, Inc.  
P.O. Box 3524  
Clarksville, TN 47043  
Telephone # 931-801-2306  
Emergency Phone # 931-801-2307  
FAX # 931-28-2643

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services

neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.

- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current,

written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising

from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment 1;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.

- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**THIS IS THE NORMAL INSURANCE PARAGRAPH. DO YOU WANT THIS ONE OR THE NEXT ONE OR PART OF THIS ONE WITH THE ADDITIONAL PARAGRAPHS ADDED NEXT:**

- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to



give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

**a. Commercial General Liability Insurance**

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain bodily injury/property damage with a combined single limit not less than **one million dollars (\$1,000,000)** per occurrence and **two million dollars (\$2,000,000)** aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least **two million dollars (\$2,000,000)**.

**b. Workers' Compensation and Employer Liability Insurance**

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than **one million dollars (\$1,000,000)** including employer liability of one million dollars **(\$1,000,000)** per accident for bodily injury by accident, **one million dollars (\$1,000,000)** policy limit by disease, and **one million dollars (\$1,000,000)** per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than **one million dollars (\$1,000,000)** per occurrence or combined single limit.

**Insurance.** The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. Marine Employers Liability Insurance under the Jones Act as described by Maritime law.

b. Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

c. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.3. Competitive Procurements This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the State Agency Commissioner, for such decision and non-competitive procurement.

**IN WITNESS WHEREOF,**

**RIVER MARINE SERVICES INC.:**

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**CONTRACTOR SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF TRANSPORTATION:**

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**JOHN C. SCHROER, COMMISSIONER**

**DATE**

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**JOHN REINBOLD, GENERAL COUNSEL  
APPROVED AS TO FORM AND LEGALITY**

**DATE**

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**ATTACHMENT ONE**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>If the attestation applies to more than one contract, modify this row accordingly.</b>  <b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER:</b>	

**The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.**

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**